

John P. Margiotta (*jmargiotta@fzlj.com*)
Laura Popp-Rosenberg (*lpopp-rosenberg@fzlj.com*)
Brian Leary (*bleary@fzlj.com*)
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
151 West 42nd Street, 17th Floor
New York, NY 10036
Tel: (212) 813-5900

Attorneys for Defendants/Counterclaim-Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

APOLLO HEALTHCARE CORP. d/b/a
APOLLO HEALTH AND BEAUTY CARE,

Plaintiff,

v.

SOL DE JANEIRO USA INC. and
SOL DE JANEIRO IP, INC.,

Defendants.

Civil Action No.: 1:22-cv-07719

JURY TRIAL DEMANDED

SOL DE JANEIRO USA INC. and
SOL DE JANEIRO IP, INC.,

Counterclaim-Plaintiffs,

v.

APOLLO HEALTHCARE CORP. d/b/a
APOLLO HEALTH AND BEAUTY CARE
and COSTCO WHOLESALE CORP.,

Counterclaim-Defendants.

**ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIMS OF DEFENDANTS**

Defendants Sol de Janeiro USA Inc. and Sol de Janeiro IP, Inc. (together, “Sol de Janeiro” or “Defendants”), by and through their undersigned counsel, hereby answer the Amended Complaint (ECF No. 12) of Plaintiff Apollo Healthcare Corp. d/b/a Apollo Health and Beauty Care (“Apollo” or “Plaintiff”) as follows:

PARTIES

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Amended Complaint and, therefore, deny the same.
2. Defendants admit the allegations in Paragraph 2 of the Amended Complaint.
3. Defendants admit the allegations in Paragraph 3 of the Amended Complaint.

JURISDICTION AND VENUE

4. Defendants admit that Plaintiff’s claims purport to arise under 15 U.S.C. §§ 1117 and 1125 and 28 U.S.C. §§ 2201 and 2202 but deny that Plaintiff’s claims have any merit.
5. Defendants admit the allegations regarding subject matter jurisdiction in Paragraph 5 of the Amended Complaint but deny that Plaintiff’s claims have any validity.
6. Defendants admit that the Court has personal jurisdiction over them for purposes of this case but deny the remaining allegations in Paragraph 6 of the Amended Complaint.
7. Defendants admit that venue is proper in this district for purposes of this case but deny the remaining allegations in Paragraph 7 of the Amended Complaint.

JURY DEMAND

8. Defendants admit that in paragraph 8 of the Amended Complaint Plaintiff Apollo demands a jury trial for all claims, but deny that Plaintiff’s claims have any merit.

RESPONSE TO PLAINTIFF'S STATEMENT OF FACTS

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Amended Complaint, and therefore deny the same.

10. Defendants admit that Plaintiff Apollo markets and sells Nutrius® BRAZILIAN BODY BUTTER CREAM™ in packaging shown therein, and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Amended Complaint, and therefore deny the same.

11. Defendants deny the allegations in Paragraph 11 of the Amended Complaint, but admit that Defendants sell skincare products called Brazilian Bum Bum Cream, Bom Dia Bright Cream, and Coco Cabana Cream and that these products are marketed to have, respectively, visibly firming, retexturizing and brightening, and hydrating effects on skin. Defendants further admit that they use different colors on different product packaging.

12. Defendants deny the allegations in Paragraph 12 of the Amended Complaint, but admit that their Brazilian Bum Bum Cream, Bom Dia Bright Cream, and Coco Cabana Cream products are advertised to include as ingredients Guaraná, Fruit AHAs and Vitamin C, and CocoSugar blend, respectively. Defendants further admit that they use different colors on different product packaging.

13. Defendants deny the allegations in Paragraph 13 of the Amended Complaint, but admit that their Brazilian Bum Bum Cream, Bom Dia Bright Cream, and Coco Cabana Cream products are advertised to have fragrances described as, respectively, a warm gourmand including pistachio and salted caramel, a warm flower including black amber plum and vanilla woods, and a tropical gourmand including coconut cream and toasted praline. Defendants further admit that they use different colors on different product packaging.

14. Defendants deny the allegations in Paragraph 14 of the Amended Complaint to the extent that they refer to purported rights, but admit that Defendants own protectable rights in the trade dress of the Brazilian Bum Bum Cream product and that Plaintiff is infringing those rights.

15. Defendants admit the allegations in Paragraph 15 of the Amended Complaint.

16. Defendants admit the allegations in Paragraph 16 of the Amended Complaint.

17. Defendants admit the allegations in Paragraph 17 of the Amended Complaint.

18. Defendants admit the allegations in Paragraph 18 of the Amended Complaint

19. Defendants admit the allegations in Paragraph 19 of the Amended Complaint.

20. Defendants deny the allegations in Paragraph 20 of the Amended Complaint, but admit that their August 2020 letter was addressed to Charles Wachsberg and Richard Wachsberg and states “VIA EMAIL ONLY.”

21. Defendants admit to sending a copy of their August 2020 letter to Costco Wholesale, which is selling Plaintiff’s NUTRIUS® BRAZILIAN BODY BUTTER CREAM™ product. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Amended Complaint, and therefore deny the same.

22. Defendants admit to sending a copy of their August 2020 letter to Walmart. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 22 of the Amended Complaint, and therefore deny the same.

23. Defendants deny the allegations in Paragraph 23 of the Amended Complaint, but admit that Defendants have not yet registered the protectable trade dress of the Brazilian Bum Bum Cream product with the United States Patent and Trademark Office.

24. Defendants deny the allegations in Paragraph 24 of the Amended Complaint.

25. Defendants deny the allegations in Paragraph 25 of the Amended Complaint.

26. Defendants deny the allegations in Paragraph 26 of the Amended Complaint, but admit that their August 2020 letter included the phrase “a bright yellow round tub with a white oversized cap/lid.”

27. Defendants deny the allegations in Paragraph 27 of the Amended Complaint.

28. Defendants deny the allegations in Paragraph 28 of the Amended Complaint.

29. Defendants deny the allegations in Paragraph 29 of the Amended Complaint, and aver that the respective packages speak for themselves.

30. Defendants deny the allegation in Paragraph 30 of the Amended Complaint that “Plaintiff Apollo’s use of its packaging is not likely to cause confusion, mistake, and/or deception,” admit that a 250 ML jar of Defendants’ Brazilian Bum Bum Cream retails at approximately \$48, and otherwise lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30 of the Amended Complaint, and therefore deny the same.

31. Defendants deny the allegations in Paragraph 31 of the Amended Complaint.

32. Defendants admit that there is a justiciable controversy between the parties and allege that Plaintiff’s promotion and sale of NUTRIUS® BRAZILIAN BODY BUTTER CREAM™ product in its current packaging infringes Defendants’ rights.

RESPONSE TO FIRST CLAIM FOR RELIEF
“Declaratory Relief: Unenforceability of Trade Dress
Failure To Function as Source Identifier”

33. Defendants repeat and re-allege the above responses to Paragraphs 1 through 32 of the Amended Complaint.

34. Defendants admit that Plaintiff's claims purport to arise under 15 U.S.C. §§ 1117 and 1125 and 28 U.S.C. §§ 2201 and 2202 but deny that Plaintiff's claims have any merit.

35. Defendants admit the allegations in Paragraph 35 of the Amended Complaint, except deny that Defendants' rights are "purported."

36. Defendants deny the allegations in Paragraph 36 of the Amended Complaint, but admit that Defendants own protectable rights in the trade dress of the Brazilian Bum Bum Cream product and that their August 2020 letter included the phrase "a bright yellow round tub with a white oversized cap/lid."

37. Defendants deny the allegations in Paragraph 37 of the Amended Complaint.

38. Defendants admit the allegations in Paragraph 38 of the Amended Complaint.

39. Defendants admit the allegations in Paragraph 39 of the Amended Complaint.

40. Paragraph 40 of the Amended Complaint sets forth a request for relief from the Court to which no response is required. To the extent a response is deemed to be required, Defendants deny said allegations and deny that Plaintiff's claims merit any relief from the Court.

RESPONSE TO SECOND CLAIM FOR RELIEF
"Declaratory Relief: Unenforceability of Trade Dress
Ornamental/Decorative/Informational"

41. Defendants repeat and re-allege the above responses to Paragraphs 1 through 40 of the Amended Complaint.

42. Defendants admit that Plaintiff's claims purport to arise under 15 U.S.C. §§ 1117 and 1125 and 28 U.S.C. §§ 2201 and 2202 but deny that Plaintiff's claims have any merit.

43. Defendants admit the allegations in Paragraph 43 of the Amended Complaint, except deny that Defendants' rights are "purported."

44. Defendants deny the allegations in Paragraph 44 of the Amended Complaint, but admit that Defendants own protectable rights in the trade dress of the Brazilian Bum Bum Cream product and that their August 2020 letter included the phrase “a bright yellow round tub with a white oversized cap/lid.”

45. Defendants deny the allegations in Paragraph 45 of the Amended Complaint.

46. Defendants deny the allegations in Paragraph 46 of the Amended Complaint.

47. Defendants admit the allegations in Paragraph 47 of the Amended Complaint.

48. Defendants admit the allegations in Paragraph 48 of the Amended Complaint.

49. Paragraph 49 of the Amended Complaint sets forth a request for relief from the Court to which no response is required. To the extent a response is deemed to be required, Defendants deny said allegations and deny that Plaintiff’s claims merit any relief from the Court.

RESPONSE TO THIRD CLAIM FOR RELIEF
“Declaratory Relief: Unenforceability of Trade Dress
Functional”

50. Defendants repeat and re-allege the above responses to Paragraphs 1 through 49 of the Amended Complaint.

51. Defendants admit that Plaintiff’s claims purport to arise under 15 U.S.C. §§ 1117 and 1125 and 28 U.S.C. §§ 2201 and 2202 but deny that Plaintiff’s claims have any merit.

52. Defendants admit the allegations in Paragraph 52 of the Amended Complaint, except deny that Defendants’ rights are “purported.”

53. Defendants deny the allegations in Paragraph 53 of the Amended Complaint, but admit that Defendants own protectable rights in the trade dress of the Brazilian Bum Bum Cream product and that their August 2020 letter included the phrase “a bright yellow round tub with a white oversized cap/lid.”

54. Defendants deny the allegations in Paragraph 54 of the Amended Complaint.

55. Defendants deny the allegations in Paragraph 55 of the Amended Complaint.

56. Defendants admit the allegations in Paragraph 56 of the Amended Complaint.

57. Defendants admit the allegations in Paragraph 57 of the Amended Complaint.

58. Paragraph 58 of the Amended Complaint sets forth a request for relief from the Court to which no response is required. To the extent a response is deemed to be required, Defendants deny said allegations and deny that Plaintiff's claims merit any relief from the Court.

RESPONSE TO FOURTH CLAIM FOR RELIEF
“Declaratory Relief: Unenforceability of Trade Dress
Non-Distinctive”

59. Defendants repeat and re-allege the above responses to Paragraphs 1 through 58 of the Amended Complaint.

60. Defendants admit that Plaintiff's claims purport to arise under 15 U.S.C. §§ 1117 and 1125 and 28 U.S.C. §§ 2201 and 2202 but deny that Plaintiff's claims have any merit.

61. Defendants admit the allegations in Paragraph 61 of the Amended Complaint, except deny that Defendants' rights are “purported.”

62. Defendants deny the allegations in Paragraph 62 of the Amended Complaint, but admit that Defendants own protectable rights in the trade dress of the Brazilian Bum Bum Cream product and that their August 2020 letter included the phrase “a bright yellow round tub with a white oversized cap/lid.”

63. Defendants deny the allegations in Paragraph 63 of the Amended Complaint.

64. Defendants deny the allegations in Paragraph 64 of the Amended Complaint.

65. Defendants admit the allegations in Paragraph 65 of the Amended Complaint.

66. Defendants deny the allegations in Paragraph 66 of the Amended Complaint.

67. Paragraph 67 of the Amended Complaint sets forth a request for relief from the Court to which no response is required. To the extent a response is deemed to be required, Defendants deny said allegations and deny that Plaintiff's claims merit any relief from the Court.

RESPONSE TO FIFTH CLAIM FOR RELIEF
"Declaratory Relief: Non-Infringement of Trade Dress"

68. Defendants repeat and re-allege the above responses to Paragraphs 1 through 67 of the Amended Complaint.

69. Defendants admit that Plaintiff's claims purport to arise under 15 U.S.C. §§ 1117 and 1125 and 28 U.S.C. §§ 2201 and 2202 but deny that Plaintiff's claims have any merit.

70. Defendants admit the allegations in Paragraph 70 of the Amended Complaint, except deny that Defendants' rights are "purported."

71. Defendants deny the allegations in Paragraph 71 of the Amended Complaint.

72. Defendants deny the allegations in Paragraph 72 of the Amended Complaint.

73. Defendants deny the allegations in Paragraph 73 of the Amended Complaint, and aver that the respective packages speak for themselves.

74. Defendants deny the allegation in Paragraph 74 of the Amended Complaint that "Plaintiff Apollo's use of its packaging is not likely to cause confusion, mistake, and/or deception," admit that a 250 ML jar of Defendants' Brazilian Bum Bum Cream retails at approximately \$48, and otherwise lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 74 of the Amended Complaint, and therefore deny the same.

75. Defendants admit the allegations in Paragraph 75 of the Amended Complaint

76. Defendants admit the allegations in Paragraph 76 of the Amended Complaint.

77. Defendants deny the allegations in Paragraph 77 of the Amended Complaint.

RESPONSE TO SIXTH CLAIM FOR RELIEF

“Declaratory Relief: Exceptional Case Under 15 U.S.C. § 1117(a)”

78. Defendants repeat and re-allege the above responses to Paragraphs 1 through 77 of the Amended Complaint.

79. Defendants admit that Plaintiff’s claims purport to arise under 15 U.S.C. §§ 1117 and 1125 and 28 U.S.C. §§ 2201 and 2202 but deny that Plaintiff’s claims have any merit.

80. Defendants deny the allegations in Paragraph 80 of the Amended Complaint.

81. Defendants deny the allegations in Paragraph 81 of the Amended Complaint, but admit that their August 2020 letter states: “In the event that we do not receive a timely and satisfactory response from Apollo and/or Apollo does not immediately discontinue use of the Infringing Trade Dress and sale of the Infringing Products, we have been instructed to take whatever legal action is deemed necessary and appropriate to protect SDJ’s valuable trademark rights, without further notice.”

82. Defendants deny the allegations in Paragraph 82 of the Amended Complaint, but admit that their August 2020 letter states that “This may include action against Apollo as well as one or more of its retailers/distributors.”

83. Defendants admit to sending a copy of their August 2020 letter to Costco Wholesale. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 83 of the Amended Complaint, and therefore deny the same.

84. Defendants admit to sending a copy of their August 2020 letter to Walmart. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 84 of the Amended Complaint, and therefore deny the same.

85. Defendants deny the allegations in Paragraph 85 of the Amended Complaint.

86. Defendants deny the allegations in Paragraph 86 of the Amended Complaint.

87. Defendants deny the allegations in Paragraph 87 of the Amended Complaint.

RESPONSE TO REQUEST FOR RELIEF

Defendants deny that Plaintiff's claims have any merit and, therefore, deny that Plaintiff has a right to any relief from this Court in this case.

COUNTERCLAIMS

THE PARTIES

88. Counterclaim-Plaintiff Sol de Janeiro USA Inc. ("Sol de Janeiro USA") is a corporation organized under the laws of Delaware with a principal place of business at 551 Fifth Avenue Suite 2030, New York, NY 10176.

89. Counterclaim-Plaintiff Sol de Janeiro IP, Inc. ("Sol de Janeiro IP") is a corporation organized under the laws of Delaware with a principal place of business at 551 Fifth Avenue Suite 2030, New York, NY 10176.

90. Upon information and belief, Counterclaim-Defendant Apollo Healthcare Corp. d/b/a Apollo Health and Beauty Care is a Canada Corporation with its principal place of business at 1 Apollo Place, North York, ON M3J 0H2, Canada.

91. Upon information and belief, Counterclaim-Defendant Costco Wholesale Corp. (hereinafter, "Costco") is a corporation organized under the laws of Washington with a principal place of business at 999 Lake Dr., Issaquah, WA 98027.

JURISDICTION AND VENUE

92. This Court has subject matter jurisdiction over this controversy under 28 U.S.C. §§ 1331 and 1338(a)-(b) because this action under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*

93. This Court has supplemental jurisdiction over Sol de Janeiro’s state law counterclaims under Section 1367(a) of the United States Judicial Code, 28 U.S.C. § 1367(a).

94. This Court has personal jurisdiction over Apollo under Section 301 and/or 302 of the New York Civil Practice Laws and Rules because Apollo has already consented to the personal jurisdiction of this Court in filing this action, because Apollo continuously and systematically conducts, transacts, and solicits business in this District, including by shipping and selling infringing products in and to this District, and because the events giving rise to this Complaint occurred in this State and had effects in this State.

95. This Court has personal jurisdiction over Costco under Section 301 and/or 302 of the New York Civil Practice Laws and Rules because Costco maintains offices in this District, and/or continuously and systematically conducts, transacts, and solicits business in this District, including by shipping and selling infringing products in and to this District, and because the events giving rise to this Complaint occurred in this state and/or had effects in this state.

96. Venue is proper in this District pursuant to Sections 1391(b) and (c) of the Judicial Code, 28 U.S.C. §1391(b) and (c), because Apollo and Costco are subject to personal jurisdiction in this District, as detailed in the preceding paragraphs and because a substantial portion of the events at issue have arisen and will arise in this District.

FACTS COMMON TO ALL COUNTERCLAIMS

Sol de Janeiro and Its Bestselling, Cult-Favorite Brazilian Bum Bum Cream

97. Founded in 2015 by a Brazilian expat living in the United States and two Americans who had previously lived in Brazil, Sol de Janeiro—Portuguese for “Sun of January”—began as a shared vision to create a luxury body care brand inspired by Brazilian attitudes toward beauty. The result is a best-selling line of beauty products made for all different

bodies, no matter the size, age, or color, with formulas that incorporate fruit and plant butters native to Brazil, and with jars, labeling, and packaging that is bright and sunny—like a Rio beach bottled up.

98. In April 2015, Sol de Janeiro launched its best-selling, now cult-favorite Brazilian Bum Bum Cream. In the words of co-founder Camila Pierotti, “When it became clear we were going to focus on taking care of the body, we thought, ‘What’s Brazilians’ favorite body party?’ It’s their bum bum. Obviously this cream isn’t just for the bum bum, but to us, the bum bum represents the curves of your body and that’s what we love.”¹

99. Pronounced “boom boom” in Portuguese, Brazilian Bum Bum Cream is a body cream intended to hydrate and soften as well as visibly smooth and tighten the appearance of skin. Among other ingredients, Brazilian Bum Bum Cream includes Cupuaçu Butter, Guaraná Extract, Açaí Oil, and Brazil Nut Oil, as well as the proprietary scent Cheirosa ’62, which calls to mind pistachio, salted caramel, and vanilla.

100. From the very beginning, Sol de Janeiro sought to develop a unique jar and packaging for its Brazilian Bum Bum Cream that reflected the Brazilian body-positivity and beach culture that inspired the brand. Sol de Janeiro’s intent was to break the rules of the skincare industry. In an interview with *InStyle*, Ms. Pierotti described how they designed the Brazilian Bum Bum Cream packaging to disrupt industry norms: “We knew the jar had to be beautiful and impactful and we wanted it to be yellow with a rounded bottom and chunky cap. That’s when all of the naysayers started coming in and telling us people would think the brand is for summer only or a sunscreen line. We also put a lot of fragrance in it and were told it was too

¹ <https://www.instyle.com/beauty/skin/sol-de-janeiro-camila-pierotti-interview>

much for a body cream. We stuck to our gut and disrupted what was usually done and it worked out.”²

101. The resulting product design is unique and instantly recognizable and includes a colored jar that has no writing on it which is gently rounded at its bottom; a large, overhanging lid that extends nearly half the height of the product and protrudes outward over the jar body (rather than screwing flush); a color-block combination of yellow and white components; the product name presented in capitalized dark-gray lettering framed by smaller text above and below. The resulting product design (the “Trade Dress”) is shown below:



102. Sol de Janeiro chose to “tool,” or design and engineer, the jar and cap specific to the Brazilian Bum Bum Cream rather than use “stock,” or standardized, components. A stock jar and lid would have served the functional purpose of a jar and lid but lacked the aesthetic value Sol de Janeiro sought to imbue in the Trade Dress. Placing labeling copy on the oversized lid, rather than the jar, also differentiated the Brazilian Bum Bum Cream Trade Dress from industry norms and has been a consistent design element across the product family. The sample Sephora.com shopping results below is illustrative: of the “creams” and “lotions” among “Body

² <https://www.instyle.com/beauty/skin/sol-de-janeiro-camila-pierotti-interview>

Lotions & Body Oils” that address “Loss of firmness/Elasticity,” only the Brazilian Bum Bum Cream Trade Dress utilizes all of these elements in combination:

The screenshot shows the Sephora website's search results for 'Body Lotions & Body Oils'. The page features a navigation bar at the top with links to New, Brands, Makeup, Skincare, Hair, Fragrance, Tools & Brushes, Bath & Body, Mini Size, Gifts, Beauty Under \$20, and Sale & Offers. Below the navigation bar, the search results are displayed with filters on the left and product listings on the right.

Filters:

- Pickup & Delivery:** [Dropdown arrow]
- Formulation:** [Dropdown arrow]
 - ☒ Cream (4)
 - ☒ Lotion (2)
 - ☐ Serum (2)
 - ☐ Oil (4)
- Brand:** [Dropdown arrow]
- Rating:** [Dropdown arrow]
- Concerns:** [Dropdown arrow]
 - ☒ Loss of firmness / Elasticity (5)
 - ☐ Dryness (4)
 - ☐ Dullness (1)
 - ☐ Anti-aging (2)
 - ☐ Fine lines / Wrinkles (1)
 - ☐ Dullness / Uneven texture (1)
- Ingredient Preferences:** [Dropdown arrow]
- Skin Type:** [Dropdown arrow]
- Shopping Preferences:** [Dropdown arrow]
- Price Range:** [Dropdown arrow]

Search Results:

5 Results

Sort by: Relevance [Dropdown arrow]

Products:

- Sol de Janeiro Brazilian Bum Bum Cream**
 - ★★★★☆ 8.5K
 - \$22.00 - \$85.00
- Biossance Squalane + Caffeine Toning Body Cream**
 - ★★★★☆ 165
 - \$30.00
- La Mer The Reparative Body Lotion**
 - ★★★★☆ 19
 - \$170.00
- BeautyBio The Sculptor with LipoCare™ Cellulite Smoothing Body Cream**
 - ★★★★☆ 15
 - \$65.00
- Dr. Barbara Sturm Anti-Aging Body Cream**
 - ★★★★☆ 9
 - \$125.00

1-5 of 5 Results

103. Sol de Janeiro’s Brazilian Bum Bum Cream is a celebrated, best-selling success. In 2016—only one year after launch—Brazilian Bum Bum Cream began to win awards and appear in “Best Of” lists. For example, *Southern Living* included Brazilian Bum Bum Cream in

its “2016 Beauty Awards,” and *NewBeauty* listed Brazilian Bum Bum Cream as a “Best Skin Smoothing Body Lotion” in 2016. And Brazilian Bum Bum Cream continues to garner accolades today, regularly appearing in annual best-of lists, skincare recommendation articles, and readers’ and reviewers’ choice awards, as demonstrated by the following non-exhaustive examples:

- Included in *NewBeauty*’s “2017 NewBeauty Awards: 20 Everyday Beauty Essentials That Fit Into Every Woman’s Routine”³;
- No. 1 on *NewBeauty*’s “NewBeauty Award Winners: Glowing Skin Is Always In” from 2018⁴;
- A winner of “The Vogue Beauty Awards 2018”⁵;
- An *influenster*’s Reviewers’ Choice 2019 Winner for “Best Overall Cellulite Cream”⁶;
- An *allure* Reader’s Choice Award Winner for 2020 in the “body” category⁷;
- Included in *Harper’s Bazaar*’s March 23, 2020 article entitled “The 13 Best Creams for Cellulite and Stretch Marks”⁸;
- Included in *ESSENCE*’s “Best in Black Beauty 2020: Body Care”⁹;
- Included in *Her Campus*’s 2020 “College Beauty Awards: 16 Body Products That Feel Like Absolute Luxury”¹⁰;
- Included in *Glamour*’s 2020 Readers’ Choice Awards;

³ <https://www.newbeauty.com/newbeauty-choice-awards-everyday-beauty-essesntials/1>

⁴ <https://www.newbeauty.com/awards-glow-getters/2>

⁵ <https://www.vogue.co.uk/gallery/vogue-beauty-awards-winners>

⁶ <https://www.influenster.com/awards/2019/winners>

⁷ <https://www.allure.com/story/readers-choice-award-2020-winners>

⁸ <https://www.harpersbazaar.com/beauty/skin-care/advice/g3614/best-anti-cellulite-creams-and-stretch-mark-creams/>

⁹ <https://www.essence.com/beauty/essence-best-in-black-beauty-2020-body-care/>

¹⁰ <https://www.hercampus.com/style/best-body-care-products-2020/>

- Included at the top of the list and labeled “The Cult Favorite” in *Marie Claire*’s 2021 article “The 22 Best Cellulite Creams for Smooth, Firm Skin”¹¹;
- Identified by *Star Magazine* as a 2022 “Cult Favorite”;
- Included in a *New York Post* March 31, 2022 article entitled “21 best body butters we tested in 2022 for smooth, hydrated skin”¹²; and
- Named a “Body Icon” in *Harper’s Bazaar*’s August 30, 2022 article entitled “The Next Generation of Iconic Beauty Products,” which further states that “Brazilian Bum Bum Cream has been Sephora’s best-selling body cream for six years—and it has more than 50,000 five-star reviews worldwide.”¹³

104. In addition to praising the cream, the majority of these awards and best-of lists feature the Brazilian Bum Bum Cream Trade Dress in some manner. Most reproduce an image of the unique Brazilian Bum Bum Cream Trade Dress as part of the identification of the winner. As an example, the following image appeared on *Vogue*’s list of its 2018 Beauty Awards winners:



Source: <https://www.vogue.co.uk/gallery/vogue-beauty-awards-winners>

¹¹ <https://www.marieclaire.com/beauty/g32713642/best-cellulite-creams/>

¹² <https://nypost.com/article/best-body-butter/>


¹³ <https://www.harpersbazaar.com/beauty/a40921095/most-iconic-beauty-products-2022/>

105. As another example, the following image appeared in *allure*'s list of 2020 Readers' Choice Awards:


body

Whether you seek a stress-relieving scrub for your shoulders or a skin-soothing lotion for your bum, these winners are meant to be liberally slathered and spritzed for full-body coverage. **Read more.**


scroll for more →



BODY WASH
Bath & Body Works
A Thousand Wishes
Moisturizing Body Wash
\$14
SHOP NOW



BODY SCRUB
Bath & Body Works
Aromatherapy Eucalyptus +
Spearmint Sugar Scrub
\$17
SHOP NOW



BODY LOTION
Sol de Janeiro
Brazilian Bum Bum Cream
\$45
SHOP NOW

Source: <https://www.allure.com/story/readers-choice-award-2020-winners>

106. Indeed, many of these awards articles and best-of lists select the unique-looking Brazilian Bum Bum Cream Trade Dress to feature at the top of the page—even if the text or award specific to the product doesn't appear until much further into the article body. For example, *Harper's Bazaar*'s article, "The 13 Best Creams for Cellulite And Stretch Marks" selected the Brazilian Bum Bum Cream product image to place front and center for the article header (as well as including an individual image of the product lower within the article body):

The 13 Best Creams for Cellulite And Stretch Marks

Smoother, firmer-looking skin in a bottle—right this way.

BY HARPER'S BAZAAR STAFF / MAR 23, 2020



There's no one-size-fits-all solution to cellulite and stretch marks, but these caffeine, collagen and lipid-rich creams will get you a whole lot closer to ultra-smooth skin.

Source: <https://www.harpersbazaar.com/beauty/skin-care/advice/g3614/best-anti-cellulite-creams-and-stretch-mark-creams/>

107. The *New York Post*'s article "21 best body butters we tested in 2022 for smooth, hydrated skin" also selected the Trade Dress for the article's header image:

LIFESTYLE

SKINCARE

21 best body butters we tested in 2022

for smooth, hydrated skin

By Victoria Giardina

March 31, 2022 | 12:06pm | Updated



New York Post Composite

Source: <https://nypost.com/article/best-body-butter/>

108. *Harper's Bazaar's* article “The Next Generation of Iconic Beauty Products” also placed an image of the Brazilian Bum Bum Cream Trade Dress at the top of the list of “Body Icons”:

BODY ICONS

Luxurious formulas that make it easy to pamper your skin below the neck.



First Aid Beauty KP Bump Eraser Body Scrub with 10% AHA

\$30 AT SEPHORA

CREDIT: SEPHORA

The number-one-selling specialty body scrub in the United States, First Aid Beauty KP Bump Eraser Body Scrub uses 10 percent AHA plus pumice buffing beads to polish the skin and smooth rough keratosis pilaris patches.



Sol de Janeiro Brazilian Bum Bum Cream

\$48 AT SOLDEJANEIRO.COM

CREDIT: SEPHORA

Packed with antioxidant-rich acai oil, skin-tightening guarana extract, and cupuacu butter, Sol de Janeiro Brazilian Bum Bum Cream has been Sephora's best-selling body cream for six years—and it has more than 50,000 five-star reviews worldwide.

Source: <https://www.harpersbazaar.com/beauty/a40921095/most-iconic-beauty-products-2022/>

109. Finally, some awards articles even specifically call out the Brazilian Bum Bum Cream Trade Dress. For example, *Her Campus*'s 2020 "College Beauty Awards" article states, "There are so many good things to say about this cream: the scent is warm and spicy, the formula melts into skin quickly, *the packaging—we mean, COME ON.*" (emphasis added)¹⁴

¹⁴ <https://www.hercampus.com/style/best-body-care-products-2020/>

110. Brazilian Bum Bum Cream is also beloved by celebrities and other influencers, including Selena Gomez,¹⁵ Quinta Brunson,¹⁶ Arden Cho, Cat Sadler, and Hilary Duff, who described herself as “obsessed.”¹⁷ Hailey Bieber, nee Baldwin, told *Refinery29*, “***I love this packaging***, and it smells amazing. It’s like I’m on the beach.” (emphasis added)¹⁸ On social media networks, such as Instagram and TikTok, celebrity and influencer praise for Brazilian Bum Bum Cream invariably includes photos and videos of the unique Trade Dress, as seen in the following examples:



Source (L to R): @ipautorres Instagram story; @arden_cho Instagram story; @selenagomez TikTok

111. Brazilian Bum Bum Cream’s bestselling, cult-favorite success follows from consumers’ love of the product and its Trade Dress, as well as Sol de Janeiro’s substantial investments. Sol de Janeiro spends upwards of ten million per year to advertise Brazilian Bum

¹⁵ <https://www.shape.com/lifestyle/beauty-style/body-care/selena-gomez-sol-de-janeiro-brazilian-bum-bum-cream>

¹⁶ <https://www.nytimes.com/2022/10/06/t-magazine/quinta-brunson-abbott-elementary.html>

¹⁷ <https://www.nytimes.com/2017/05/30/fashion/hilary-duff-beauty-regimen.html>

¹⁸ <https://www.refinery29.com/en-us/2016/09/122109/hailey-baldwin-sephora-favorite-makeup>

Bum Cream through visual merchandising in stores and online, partnerships with brand influencers, and retail and brand sampling, among other marketing channels.

112. Brazilian Bum Bum Cream is sold throughout New York and the United States, in both physical and online stores, including but not limited to:

- Luxury beauty stores and boutiques, such as Sephora;
- Department stores, such as JC Penney and Kohl's; and
- Websites, such as Amazon.com, Sephora.com, and SoldeJaneiro.com.

113. Upon information and belief, Apollo sells its infringing Brazilian Body Butter Cream through these same channels of trade, including department stores, such as TJ Maxx, and websites, such as Amazon.com, among others. Upon information and belief, Apollo and Costco further sell the infringing Brazilian Body Butter Cream at Costco Wholesale stores and online at Costco.com.

114. As a result of Sol de Janeiro's extensive use and promotion of its Brazilian Bum Bum Cream, including its distinctive Trade Dress, and as a result of its phenomenal commercial success—repeatedly described as a “cult-favorite”¹⁹—and the unsolicited media coverage that has followed, Sol de Janeiro's Brazilian Bum Bum Cream and its Trade Dress have become well-known nationwide in the beauty industry and among consumers, who have come to associate the distinctive Trade Dress exclusively with Sol de Janeiro.

115. The unique combination of elements that make up the Trade Dress is not functional under Section 43(a)(3) of the Lanham Act. 15 U.S.C. § 1125(a)(3). The Trade Dress is not essential to the use or purpose of products, does not affect the cost or quality of products, and, when used exclusively by Sol de Janeiro, does not put competitors at a significant non-

¹⁹ *E.g.*, <https://www.marieclaire.com/beauty/g32713642/best-cellulite-creams/>

reputation–related disadvantage. As detailed above, there are myriad alternative product designs that competitors use to compete in the marketplace against Brazilian Bum Bum Cream, and such alternative product designs are also available to Apollo to compete without infringing the Brazilian Bum Bum Cream Trade Dress. Furthermore, as described in the preceding paragraphs, the elements that comprise the Trade Dress were selected because of their aesthetic value and ornamental purpose, not because of their functional use. Each of those features could have been designed differently without impacting the use, purpose, or quality of the body cream product and without resulting in a significant non-reputation–related disadvantage to the designer. Indeed, as described above, Sol de Janeiro has incurred increased costs in designing and manufacturing the Brazilian Bum Bum Cream Trade Dress in order to achieve the desired aesthetic value and ornamental purpose.

116. The striking and distinctive nature of the Trade Dress ensures that, even from far away, consumers will recognize and be drawn to Sol de Janeiro’s body-positive and Brazilian-beach–inspired skincare products.

117. As a result of Sol de Janeiro’s substantial effort and investment and the success of the Brazilian Bum Bum Cream bearing the Trade Dress, the Trade Dress is instantly recognizable to the public as exclusively denoting Sol de Janeiro and signaling the high quality of its products.

118. The Trade Dress represents enormous goodwill of and is a tremendously valuable asset of Sol de Janeiro.

119. Based on Sol de Janeiro’s extensive use, marketing, and promotion of Brazilian Bum Bum Cream bearing the Trade Dress, as detailed in the preceding paragraphs, Sol de Janeiro owns common-law rights in the Trade Dress in connection with its products.

Counterclaim-Defendants Apollo's And Costco's Infringing Activities

120. Upon information and belief, well after Sol de Janeiro obtained exclusive rights in the Brazilian Bum Bum Cream Trade Dress, Apollo began manufacturing and marketing a competing skincare product called Brazilian Body Butter Cream (the “Infringing Product”) that blatantly trades off the renown of the Brazilian Bum Bum Cream Trade Dress and, thereby, confuses consumers.

121. On a visual comparison, Apollo's Infringing Product incorporates nearly every element of the Brazilian Bum Bum Cream Trade Dress, as shown below.



122. Nearly identical to Sol de Janeiro's cult-favorite Brazilian Bum Bum Cream, the Infringing Product packaging consists of: a jar that has no writing on it and that is gently rounded at its bottom; a large, overhanging lid that extends nearly half the height of the product and protrudes outward over the jar body (rather than screwing flush); a color-block combination of yellow and white components with black product labeling; the product name labeled in capitalized narrow black lettering framed by smaller text above and below; and the product labeling information appearing on the oversized, overhanging lid rather than the jar body.

123. Upon information and belief, Apollo and Costco have imported, advertised, offered for sale, and sold the Infringing Product in the United States, including within New York State and this judicial District.

124. Apollo has never been associated or affiliated with or licensed by Sol de Janeiro in any way, and the Infringing Product is not made by, affiliated with, sponsored by, or endorsed by Sol de Janeiro.

125. Nonetheless, upon information and belief, Apollo's and Costco's use of Sol de Janeiro's distinctive Trade Dress is intended to mislead consumers into believing that Brazilian Body Butter Cream and Brazilian Bum Bum Cream are one and the same, or that Brazilian Body Butter Cream is made, approved, sponsored, or otherwise endorsed by Sol de Janeiro, or that the parties are somehow connected.

126. Upon information and belief, Apollo and Costco are using the infringing trade dress to pass off the Infringing Product as Sol de Janeiro's and otherwise benefit from the recognition and goodwill of Sol de Janeiro's well-known Brazilian Bum Bum Cream Trade Dress. Upon information and belief, Apollo's and Costco's conduct is calculated to confuse and mislead consumers, create a false impression as to the source and sponsorship of the Infringing Product, divert business from Sol de Janeiro, pass off the Infringing Product as being authorized and endorsed by Sol de Janeiro, and otherwise falsely misrepresent the nature and quality of the Infringing Product and misappropriate the goodwill associated with Sol de Janeiro and its Brazilian Bum Bum Cream Trade Dress.

127. Upon information and belief, Apollo and Costco are intentionally targeting and seeking to sell the Infringing Product to Sol de Janeiro's customers and potential customers who are familiar with the well-known Trade Dress of Brazilian Bum Bum Cream.

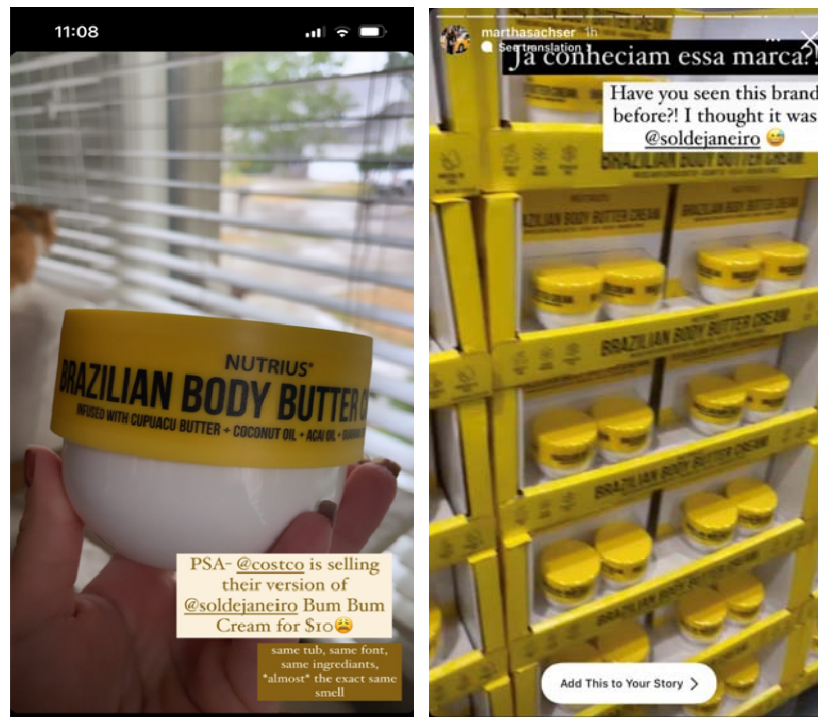
128. Upon information and belief, Apollo and Costco began using and are using the infringing trade dress with full knowledge of Sol de Janeiro's prior exclusive rights, with knowledge of the reputation and goodwill of the Brazilian Bum Bum Cream Trade Dress, and with knowledge that these identifiers are associated exclusively with Sol de Janeiro and Sol de Janeiro's goods.

129. By letter dated August 30, 2022, counsel for Sol de Janeiro wrote to the Chief Executive Officers for Apollo placing Apollo on notice of Sol de Janeiro's claims regarding the Brazilian Bum Bum Cream Trade Dress and demanding that Apollo cease sales of the Infringing Product. Counsel for Sol de Janeiro copied Costco on the August 30, 2022 letter. A true and correct copy of that letter is attached hereto as **Exhibit A**.

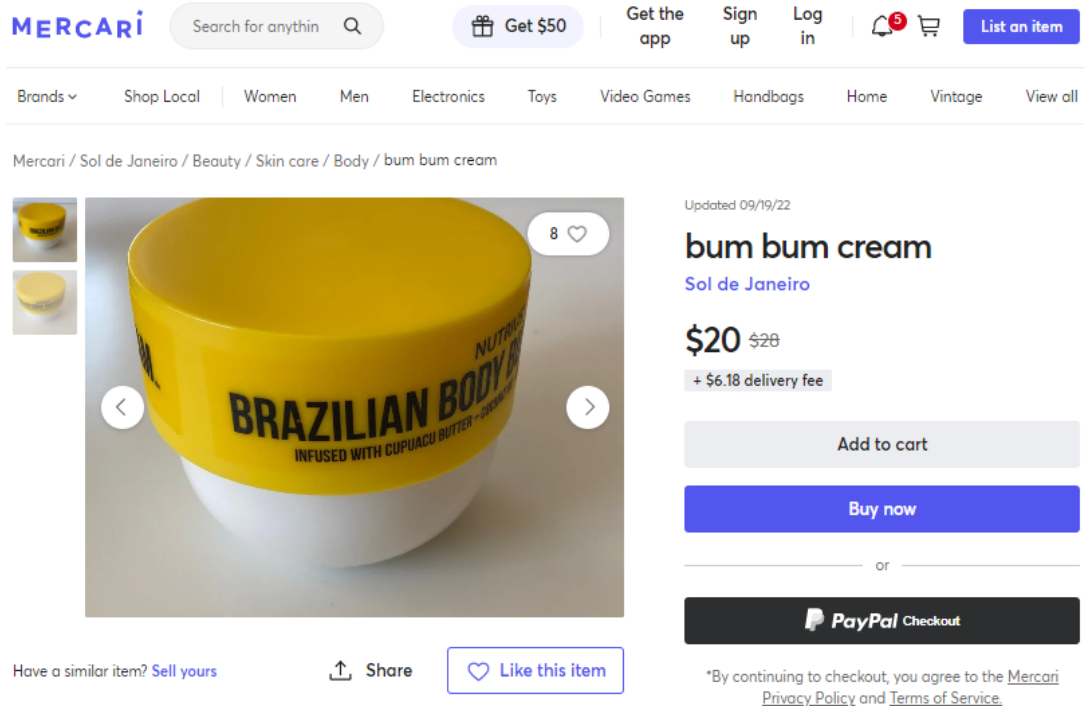
130. Further suggestive of Apollo's intent to confuse consumers, Apollo's Brazilian Body Butter Cream product also adopts a name similar to Brazilian Bum Bum Cream: both begin and end with the words "Brazilian" and "Cream" and contain between these words two short alliterative words. And the trade dress of the Infringing Product, like the Brazilian Bum Bum Cream Trade Dress, explicitly calls consumer attention to the inclusion of Guaraná extract as an ingredient. When combined with the overall distinctive elements of the Trade Dress, the similarities in product names and ingredients further increase the likelihood of consumer confusion.

131. Upon information and belief, not only is Apollo's and Costco's conduct calculated to confuse and mislead consumers and thereby likely to have and to continue to confuse consumers, but Apollo's and Costco's intentional use of trade dress nearly identical to the Brazilian Bum Bum Cream Trade Dress has created actual confusion among consumers as to the source of the Infringing Product and its affiliation with Sol de Janeiro.

132. Upon information and belief, consumer comments online and on social media platforms have mistaken the Infringing Product, including its similar trade dress, for the Brazilian Bum Bum Cream and its distinctive trade dress and expressed confusion over the source of the Infringing Product and its affiliation with Sol de Janeiro.



133. As a further example, on the peer-to-peer online marketplace Mercari.com, the Infringing Product has been listed for sale as “bum bum cream” from “Sol de Janeiro,” as shown below:



Source: <https://www.mercari.com/us/item/m36158388612/>

134. The goodwill that Sol de Janeiro has built up in the Brazilian Bum Bum Cream Trade Dress is put at risk by Apollo's and Costco's appropriation and use of the Trade Dress in connection with their business and goods. Apollo's and Costco's continued use of trade dress nearly identical to the Trade Dress in connection with a competing product is likely to continue to cause confusion in the marketplace, because purchasers and potential purchasers will assume that the Infringing Products sold by Apollo and Costco emanate from or are authorized by, licensed by, endorsed by, associated with, or otherwise connected with Sol de Janeiro and/or Sol de Janeiro's goods.

135. Apollo's and Costco's use of trade dress on the Infringing Product that so closely resembles Sol de Janeiro's Brazilian Bum Bum Cream Trade Dress unfairly and unlawfully wrests from Sol de Janeiro control over its reputation.

136. Apollo's and Costco's unauthorized acts as described herein have caused and will continue to cause irreparable damage to Sol de Janeiro's business and goodwill unless restrained by this Court.

137. Sol de Janeiro has no adequate remedy at law.

FIRST COUNTERCLAIM

TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)

138. Sol de Janeiro repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

139. The Brazilian Bum Bum Cream Trade Dress is used in commerce, is not functional, and is inherently distinctive.

140. Apollo's Brazilian Body Butter Cream skincare cream, which upon information and belief is being used in commerce, features trade dress that is confusingly similar to the Brazilian Bum Bum Cream Trade Dress and is being marketed in a manner designed to confuse consumers.

141. Apollo's and Costco's manufacture, distribution, sale, and promotion of the Brazilian Body Butter Cream product under trade dress similar to the Brazilian Bum Bum Cream Trade Dress is likely to cause confusion and mistake and to deceive consumers as to the source, origin, or sponsorship of the parties' products.

142. Upon information and belief, Apollo and Costco chose to use the infringing trade dress with actual knowledge of Sol de Janeiro's prior use of and rights in the well-known and distinctive Brazilian Bum Bum Cream Trade Dress. Upon information and belief, Apollo and Costco used the infringing Brazilian Body Butter Cream trade dress in commerce with the intent to cause confusion, to cause mistake, or to deceive.

143. Upon information and belief, Apollo's and Costco's actions constitute willful trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

144. Apollo's and Costco's conduct has caused and is causing immediate and irreparable injury to Sol de Janeiro.

SECOND COUNTERCLAIM

UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)

145. Sol de Janeiro repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

146. Apollo's and Costco's use of the Trade Dress in connection with the Infringing Product constitutes a false designation of origin and a false representation as to the origin of the Infringing Product, is likely to cause confusion, mistake, or deception as to the source of the Infringing Product, and is likely to create the false impression that the Infringing Products are authorized, sponsored, endorsed, licensed by, or affiliated with Plaintiff.

147. Upon information and belief, Apollo and Costco chose to use the trade dress of the Infringing Product with actual knowledge of Sol de Janeiro's prior use of and rights in the Brazilian Bum Bum Cream Trade Dress. Upon information and belief, Apollo and Costco used the trade dress of the Infringing Product in commerce with the intent to cause confusion, to cause mistake, or to deceive.

148. Apollo's and Costco's actions constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

THIRD COUNTERCLAIM

CONTRIBUTORY TRADEMARK INFRINGEMENT

149. Sol de Janeiro repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

150. Costco's and other retailers' and distributors' use of the Trade Dress in connection with the marketing, advertising, sale, and/or offering for sale of the Infringing Product is likely to cause confusion and mistake and to deceive consumers as to the source, origin, or sponsorship of the Infringing Product.

151. Upon information and belief, Apollo chose to use the infringing trade dress with actual knowledge of Sol de Janeiro's prior use of and rights in the well-known and distinctive Brazilian Bum Bum Cream Trade Dress.

152. Upon information and belief, Apollo has contributed to Costco's and other retailers' and distributors' infringement of the Trade Dress by intentionally inducing retailers to infringe the Trade Dress mark and by continuing to supply the Infringing Product to Costco and other retailers and distributors even after Apollo had reason to know, and indeed actual knowledge that, Costco's and other retailers' and distributors' actions constituted trademark infringement. At the very least, Apollo had reason to know of and actual knowledge of their infringement upon receipt of Sol de Janeiro's August letter, as described above.

153. Apollo's past and ongoing inducement of and continued supply to Costco and other retailers and distributors constitutes contributory trademark infringement that has caused and is causing immediate and irreparable injury to Sol de Janeiro.

FOURTH COUNTERCLAIM

UNFAIR COMPETITION UNDER NEW YORK COMMON LAW

154. Sol de Janeiro repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

155. Apollo's and Costco's conduct is likely to confuse the public as to the origin, source, or sponsorship of the Infringing Product, or to cause mistake or to deceive the public into believing that the Infringing Products are authorized, sponsored, endorsed, licensed by, or affiliated with Sol de Janeiro, in violation of Sol de Janeiro's rights in the Brazilian Bum Bum Cream Trade Dress under New York State common law.

156. Upon information and belief, Apollo and Costco chose to use the trade dress of the Infringing Product with constructive and/or actual knowledge of Sol de Janeiro's prior use of and rights in the Trade Dress. By adopting and using a colorable imitation of the valuable and distinctive Trade Dress, Apollo and Costco have been unjustly enriched and Sol de Janeiro has been damaged.

157. By misappropriating and trading upon the goodwill and business reputation represented by the Brazilian Bum Bum Cream Trade Dress, Apollo and Costco have been and, unless enjoined by this Court, will continue to be unjustly enriched at Sol de Janeiro's expense.

158. Apollo's and Costco's use of trade dress nearly identical to the Brazilian Bum Bum Cream Trade Dress constitutes unfair competition under New York common law.

159. Apollo's and Costco's conduct has caused and is causing immediate and irreparable injury to Sol de Janeiro and will continue to both damage Sol de Janeiro and deceive the public unless enjoined by this Court. Sol de Janeiro has no adequate remedy at law.

DEMAND FOR RELIEF

WHEREFORE, Sol de Janeiro respectfully request that this Court:

A. Enter judgment in favor of Sol de Janeiro and against Apollo as to all counts of Apollo's Complaint, and in favor of Sol de Janeiro and against Apollo and Costco as to all counts of Sol de Janeiro's Counterclaims.

B. Enjoin Apollo, Costco, and all other persons and/or entities acting for, with, or under authority of Apollo or Costco from: (1) using in any manner the Brazilian Bum Bum Cream Trade Dress or any colorable imitation; and (2) manufacturing, distributing, marketing, selling, or otherwise offering for sale the Infringing Product or any other products bearing trade dress that is likely to cause confusion, mistake, deception, or public misunderstanding as to the origin of such other products or their connection to Sol de Janeiro and their products;

C. Order Apollo, Costco, and all other persons and/or entities acting for, with, or under authority of Apollo or Costco take affirmative steps to dispel such false impressions that heretofore have been created by their use of the Infringing Product trade dress, including without limitation delivering to Sol de Janeiro's attorneys for destruction all goods, labels, tags, signs, stationery, prints, packages, promotional and marketing materials, advertisements and other materials (1) currently in Apollo's and/or Costco's possession, custody, or control, or (2) recalled by Apollo and/or Costco pursuant to any order of the Court or otherwise, incorporating, featuring or bearing the trade dress of the Infringing Product or any other simulation, reproduction, copy, or colorable imitation of the Brazilian Bum Bum Cream Trade Dress;

D. Direct Apollo and Costco to provide an accounting to Sol de Janeiro's attorneys of all profits, gains, and other advantages earned on the Infringing Product;

E. Direct Apollo and Costco to file with the Court and serve upon Sol de Janeiro's counsel within thirty (30) days after entry of judgment a report in writing under oath, setting forth in detail the manner and form in which it has complied with the preceding requests for relief;

F. Award Sol de Janeiro compensatory and actual damages caused by Apollo's and Costco's unlawful conduct and that such sums be trebled pursuant to 15 U.S.C. § 1117;

G. Award Sol de Janeiro all profits, gains, and other advantages derived by Apollo and Costco from their unlawful conduct and that such profits be enhanced pursuant to 17 U.S.C. § 1117;

H. Award Sol de Janeiro exemplary and punitive damages;

I. Award Sol de Janeiro their attorneys' fees and costs under 15 U.S.C. § 1117(a);

J. Award Sol de Janeiro interest, including prejudgment interest, on the foregoing sums; and

K. Grant such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Defendants/Counterclaim-Plaintiffs hereby demand trial by jury in this action.

Dated: November 3, 2022
New York, New York

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: /s/ John P. Margiotta
John P. Margiotta
Laura Popp-Rosenberg
Brian Leary
151 West 42nd Street, 17th Floor
New York, New York 10036
Tel: (212) 813-5900
Email: jmargiotta@fzlz.com
lpopp-rosenberg@fzlz.com
bleary@fzlz.com

*Attorneys for Defendants/Counterclaim-
Plaintiffs Sol de Janeiro USA Inc. and Sol de
Janeiro IP, Inc.*